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**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA**

In Re:

GREGORY THOMAS CARVER
KARAN ANN CARVER

Debtor/Plaintiffs

vs.

SETERUS, INC.; NATIONSTAR
MORTGAGE, LLC d/b/a Mr. Cooper, its
successors and/or assigns; GREGORY
FUNDING; and DOES 1-10

Defendants.

Case No: 13-11337-B-13

Adv. Proc.

Chapter 13

COMPLAINT FOR BREACH OF
CONTRACT AND BREACH OF THE
COVENANT OF GOOD FAITH AND FAIR
DEALING.

INTRODUCTION

This action seeks compensation for Defendants failure to comply with the Stipulation reached between the parties and attached hereto as **Exhibit A**. Debtor/Plaintiffs prays this court award Plaintiffs actual and punitive damages; sanctions in the amount of \$15,000,000, attorney's fees, costs under 11 U.S.C. § 105, and any other relief the court deems proper based on the Defendants' violations of 11 U.S.C. § 524.

JURISDICTION

1. Jurisdiction is conferred on this Court pursuant to the provisions of 28 USC § 1334 and 28 U.S.C. § 157.
2. This matter is a core proceeding and therefore the Bankruptcy Court has jurisdiction to enter a final order. However, in the event this case is determined to be a non-core proceeding then, and in that event the Debtor/Plaintiff consents to the entry of a final order by the Bankruptcy Judge.
3. Venue lies in this District pursuant to 28 U.S.C. § 1391(b)(2).

PARTIES

4. Debtor/Plaintiffs are natural persons and residents of the State of California. Debtor/Plaintiffs are also Plaintiffs as defined by the Bankruptcy Code, 11 U.S.C. §101 *et seq.*
5. Creditor/Defendant, SETERUS, INC. is a California corporation which became NATIONSTAR MORTGAGE, LLC.
6. Creditor/Defendant, GREGORY FUNDING is a California entity of unknown type used for mortgage servicing.
7. Creditor/Defendant, NATIONSTAR MORTGAGE, LLC d/b/a Mr. Cooper, its successors and/or assigns is a California Limited Liability used for mortgage servicing.

STATEMENT OF FACTS

8. Debtor/Plaintiffs filed a petition in bankruptcy under Chapter 13 of the U.S. Bankruptcy Code on February 28, 2013.
9. Defendant, SETERUS, INC. was listed on Schedule D of Debtors' Bankruptcy Petition
10. At the time of filing, the Debtor/Plaintiffs were delinquent in their mortgage payments.
11. The Debtor/Plaintiffs paid off the arrearages over the duration of their Chapter 13 Plan.

- 1 12. The Debtor/Plaintiffs paid all amounts due under all Final cures and a complete discharge
2 of all pre-petition debts was entered on June 29, 2018.
- 3 13. Creditor/Defendant insisted there was an arrearage amount due, despite being provided
4 proof by the Debtor/Plaintiffs.
- 5 14. Debtor/Plaintiffs filed a motion for contempt based on the violation of the discharge
6 injunction. The Complaint is attached hereto as **Exhibit B**.
- 7
8 15. Creditor/Defendant and Debtor/Plaintiffs entered into a Stipulation. See Exhibit A.

9 **CLAIM FOR RELIEF BREACH OF CONTRACT**

- 10 16. The allegations of paragraphs 1-14 herein are re-alleged and incorporated herein by
11 reference.
- 12
13 17. At all times relevant to the allegations herein:
- 14 a. Creditor/Defendants have failed to comply with the Stipulation.
- 15 b. Creditor/Defendants continue to show amounts owed by Plaintiff/Debtors.
- 16 c. Creditor/Defendant, has substantially frustrated the discharge order entered in this
17 case and their conduct constitutes gross violations of the discharge injunction as
18 provided by 11 U.S.C. §524 and further has caused the Debtor/Plaintiffs unwarranted
19 and unnecessary time, effort, expense, and needless distress in having to enforce
20 rights guaranteed by the Bankruptcy Code;
- 21
22 18. The actions of the Creditor/Defendants as alleged herein constitute willful, intentional,
23 gross and flagrant violations.
- 24
25 19. The Debtor/Plaintiffs have been severely agitated, annoyed, traumatized, emotionally
26 damaged and have otherwise been unduly inconvenienced by the actions of the
27 Creditor/Defendant. The Debtor/Plaintiffs have suffered emotional distress and other
28

1 actual damages, including legal fees and costs, in connection with the continued efforts of
2 Creditor/Defendant to collect the pre-petition debt. Attached hereto as **Exhibit C** is a
3 statement from Plaintiff's psychiatrist attesting to the damaging stress caused by
4 Creditor/Defendants' conduct.

5 20. Plaintiff's health has been damaged in an unknown amount but no less than \$15,000 in
6 medical bills and future medical care.

7
8 21. In order to carry out the provision of the Code and to maintain its integrity this Court
9 must impose actual damages, punitive damages and legal fees against the
10 Creditor/Defendant pursuant to the provisions of Section 105 of the Code.

11 22. As a result of the Defendant's violation of 11 U.S.C. Section 524, the Creditor/Defendant
12 is liable to the Debtor/Plaintiffs for actual damages, punitive damages and legal fees
13 under Section 105 of Title 11 of the United States Code.
14

15 **CLAIM FOR RELIEF**
16 **BREACH THE COVENANT OF GOOD FAITH AND FAIR DEALING**

17 23. The allegations of paragraphs 1-14 herein are re-alleged and incorporated herein by
18 reference.

19 24. At all times relevant to the allegations herein:

- 20 a. Creditor/Defendants have failed to comply with the Stipulation.
21
22 b. Based on information and belief Creditor/Defendants never intended to comply with
23 the Stipulation.
24
25 c. Creditor/Defendants sold the Plaintiff's Mortgage between themselves without
26 resolving the issues under the Plaintiffs' earlier action and the Stipulation.
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- 1 d. Both Creditor/Defendants are liable to the Plaintiff/Debtors for damages caused by
2 their actions.
- 3 e. Creditor/Defendants continue to show amounts owed by Plaintiff/Debtors.
- 4 f. Creditor/Defendant, has substantially frustrated the discharge order entered in this
5 case and their conduct constitutes gross violations of the discharge injunction as
6 provided by 11 U.S.C. §524 and further has caused the Debtor/Plaintiffs unwarranted
7 and unnecessary time, effort, expense, and needless distress in having to enforce
8 rights guaranteed by the Bankruptcy Code;
- 9
- 10 25. The actions of the Creditor/Defendants as alleged herein constitute willful, intentional,
11 gross and flagrant violations.
- 12
- 13 26. The Debtor/Plaintiffs have been severely agitated, annoyed, traumatized, emotionally
14 damaged and have otherwise been unduly inconvenienced by the actions of the
15 Creditor/Defendant. The Debtor/Plaintiffs have suffered emotional distress and other
16 actual damages, including legal fees and costs, in connection with the continued efforts of
17 Creditor/Defendant to collect the pre-petition debt. Attached hereto as Exhibit C is a
18 statement from Plaintiff's psychiatrist attesting to the damaging stress caused by
19 Creditor/Defendants' conduct.
- 20
- 21 27. Plaintiff's health has been damaged in an unknown amount but no less than \$15,000 in
22 medical bills and future medical care.
- 23
- 24 28. In order to carry out the provision of the Code and to maintain its integrity this Court
25 must impose actual damages, punitive damages and legal fees against the
26 Creditor/Defendant pursuant to the provisions of Section 105 of the Code.
- 27
- 28

1 29. As a result of the Defendant's violation of 11 U.S.C. Section 524, the Creditor/Defendant
2 is liable to the Debtor/Plaintiffs for actual damages, punitive damages and legal fees
3 under Section 105 of Title 11 of the United States Code.

4 WHEREFORE, the Debtor/Plaintiffs having set forth their claims for relief against the
5 Creditor/Defendant respectfully pray of the Court as follows:
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7 A. That the court Debtor/Plaintiffs may have and recover against the
8 Creditor/Defendant a sum to be determined by the Court in the form of actual damages,
9 but no less than \$15,000;

10 B. That the Debtor/Plaintiffs may have and recover against the Creditor/Defendant a
11 sum to be determined by the Court in the form of punitive damages;
12

13 C. That the Debtor/Plaintiffs may have and recover against the Creditor/Defendant
14 all reasonable legal fees and expenses incurred by their attorney;

15 D. That the Debtor/Plaintiffs may have such other and further relief as the Court may
16 deem just and proper.
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18 Dated: January 4, 2022

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21 Nancy Klepac, Esq.
22 Attorney for Debtor/Plaintiffs
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